



House of Representatives

General Assembly

File No. 377

January Session, 2013

Substitute House Bill No. 6609

House of Representatives, April 4, 2013

The Committee on Human Services reported through REP. ABERCROMBIE of the 83rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING NURSING HOME TRANSPARENCY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 17b-340 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2013*):

4 (a) The rates to be paid by or for persons aided or cared for by the
5 state or any town in this state to licensed chronic and convalescent
6 nursing homes, to chronic disease hospitals associated with chronic
7 and convalescent nursing homes, to rest homes with nursing
8 supervision, to licensed residential care homes, as defined by section
9 19a-490, and to residential facilities for the mentally retarded which are
10 licensed pursuant to section 17a-227 and certified to participate in the
11 Title XIX Medicaid program as intermediate care facilities for the
12 mentally retarded, for room, board and services specified in licensing
13 regulations issued by the licensing agency shall be determined
14 annually, except as otherwise provided in this subsection, after a

15 public hearing, by the Commissioner of Social Services, to be effective
16 July first of each year except as otherwise provided in this subsection.
17 Such rates shall be determined on a basis of a reasonable payment for
18 such necessary services, which basis shall take into account as a factor
19 the costs of such services. Cost of such services shall include
20 reasonable costs mandated by collective bargaining agreements with
21 certified collective bargaining agents or other agreements between the
22 employer and employees, provided "employees" shall not include
23 persons employed as managers or chief administrators or required to
24 be licensed as nursing home administrators, and compensation for
25 services rendered by proprietors at prevailing wage rates, as
26 determined by application of principles of accounting as prescribed by
27 said commissioner. Cost of such services shall not include amounts
28 paid by the facilities to employees as salary, or to attorneys or
29 consultants as fees, where the responsibility of the employees,
30 attorneys, or consultants is to persuade or seek to persuade the other
31 employees of the facility to support or oppose unionization. Nothing
32 in this subsection shall prohibit inclusion of amounts paid for legal
33 counsel related to the negotiation of collective bargaining agreements,
34 the settlement of grievances or normal administration of labor
35 relations. The commissioner may, in his or her discretion, allow the
36 inclusion of extraordinary and unanticipated costs of providing
37 services which were incurred to avoid an immediate negative impact
38 on the health and safety of patients. The commissioner may, in his or
39 her discretion, based upon review of a facility's costs, direct care staff
40 to patient ratio and any other related information, revise a facility's
41 rate for any increases or decreases to total licensed capacity of more
42 than ten beds or changes to its number of licensed rest home with
43 nursing supervision beds and chronic and convalescent nursing home
44 beds. The commissioner may so revise a facility's rate established for
45 the fiscal year ending June 30, 1993, and thereafter for any bed
46 increases, decreases or changes in licensure effective after October 1,
47 1989. Effective July 1, 1991, in facilities which have both a chronic and
48 convalescent nursing home and a rest home with nursing supervision,
49 the rate for the rest home with nursing supervision shall not exceed

50 such facility's rate for its chronic and convalescent nursing home. All
51 such facilities for which rates are determined under this subsection
52 shall report on a fiscal year basis ending on the thirtieth day of
53 September. Such report shall be submitted to the commissioner by the
54 thirty-first day of December. Each for-profit chronic and convalescent
55 nursing home which receives state funding pursuant to this section
56 shall include in such annual report a profit and loss statement from
57 each related party that receives from such for-profit chronic and
58 convalescent nursing home ten thousand dollars or more a year for
59 goods, fees and services. For purposes of this subsection, (1) a "related
60 party" includes, but is not limited to, any company related to such for-
61 profit chronic and convalescent nursing home through family
62 association, common ownership, control or business association with
63 any of the owners, operators or officials of such nursing home; (2)
64 "company" means any person, partnership, association, company,
65 holding company, limited liability company or corporation; (3) "family
66 association" means a relationship by birth, marriage or domestic
67 partnership; and (4) "profit and loss statement" means the most recent
68 annual statement on profits and losses finalized by a related party
69 before the annual report mandated under this subsection. The
70 commissioner may reduce the rate in effect for a facility which fails to
71 report on or before such date by an amount not to exceed ten per cent
72 of such rate. The commissioner shall annually, on or before the
73 fifteenth day of February, report the data contained in the reports of
74 such facilities to the joint standing committee of the General Assembly
75 having cognizance of matters relating to appropriations. For the cost
76 reporting year commencing October 1, 1985, and for subsequent cost
77 reporting years, facilities shall report the cost of using the services of
78 any nursing pool employee by separating said cost into two categories,
79 the portion of the cost equal to the salary of the employee for whom
80 the nursing pool employee is substituting shall be considered a
81 nursing cost and any cost in excess of such salary shall be further
82 divided so that seventy-five per cent of the excess cost shall be
83 considered an administrative or general cost and twenty-five per cent
84 of the excess cost shall be considered a nursing cost, provided if the

85 total nursing pool costs of a facility for any cost year are equal to or
86 exceed fifteen per cent of the total nursing expenditures of the facility
87 for such cost year, no portion of nursing pool costs in excess of fifteen
88 per cent shall be classified as administrative or general costs. The
89 commissioner, in determining such rates, shall also take into account
90 the classification of patients or boarders according to special care
91 requirements or classification of the facility according to such factors
92 as facilities and services and such other factors as he or she deems
93 reasonable, including anticipated fluctuations in the cost of providing
94 such services. The commissioner may establish a separate rate for a
95 facility or a portion of a facility for traumatic brain injury patients who
96 require extensive care but not acute general hospital care. Such
97 separate rate shall reflect the special care requirements of such
98 patients. If changes in federal or state laws, regulations or standards
99 adopted subsequent to June 30, 1985, result in increased costs or
100 expenditures in an amount exceeding one-half of one per cent of
101 allowable costs for the most recent cost reporting year, the
102 commissioner shall adjust rates and provide payment for any such
103 increased reasonable costs or expenditures within a reasonable period
104 of time retroactive to the date of enforcement. Nothing in this section
105 shall be construed to require the Department of Social Services to
106 adjust rates and provide payment for any increases in costs resulting
107 from an inspection of a facility by the Department of Public Health.
108 Such assistance as the commissioner requires from other state agencies
109 or departments in determining rates shall be made available to [him]
110 the commissioner at his or her request. Payment of the rates
111 established hereunder shall be conditioned on the establishment by
112 such facilities of admissions procedures which conform with this
113 section, section 19a-533 and all other applicable provisions of the law
114 and the provision of equality of treatment to all persons in such
115 facilities. The established rates shall be the maximum amount
116 chargeable by such facilities for care of such beneficiaries, and the
117 acceptance by or on behalf of any such facility of any additional
118 compensation for care of any such beneficiary from any other person
119 or source shall constitute the offense of aiding a beneficiary to obtain

120 aid to which he or she is not entitled and shall be punishable in the
121 same manner as is provided in subsection (b) of section 17b-97. For the
122 fiscal year ending June 30, 1992, rates for licensed residential care
123 homes and intermediate care facilities for the mentally retarded may
124 receive an increase not to exceed the most recent annual increase in the
125 Regional Data Resources Incorporated McGraw-Hill Health Care
126 Costs: Consumer Price Index (all urban)-All Items. Rates for newly
127 certified intermediate care facilities for the mentally retarded shall not
128 exceed one hundred fifty per cent of the median rate of rates in effect
129 on January 31, 1991, for intermediate care facilities for the mentally
130 retarded certified prior to February 1, 1991. Notwithstanding any
131 provision of this section, the Commissioner of Social Services may,
132 within available appropriations, provide an interim rate increase for a
133 licensed chronic and convalescent nursing home or a rest home with
134 nursing supervision for rate periods no earlier than April 1, 2004, only
135 if the commissioner determines that the increase is necessary to avoid
136 the filing of a petition for relief under Title 11 of the United States
137 Code; imposition of receivership pursuant to sections 19a-541 to 19a-
138 549, inclusive; or substantial deterioration of the facility's financial
139 condition that may be expected to adversely affect resident care and
140 the continued operation of the facility, and the commissioner
141 determines that the continued operation of the facility is in the best
142 interest of the state. The commissioner shall consider any requests for
143 interim rate increases on file with the department from March 30, 2004,
144 and those submitted subsequently for rate periods no earlier than
145 April 1, 2004. When reviewing a rate increase request the
146 commissioner shall, at a minimum, consider: [(1)] (A) Existing chronic
147 and convalescent nursing home or rest home with nursing supervision
148 utilization in the area and projected bed need; [(2)] (B) physical plant
149 long-term viability and the ability of the owner or purchaser to
150 implement any necessary property improvements; [(3)] (C) licensure
151 and certification compliance history; [(4)] (D) reasonableness of actual
152 and projected expenses; and [(5)] (E) the ability of the facility to meet
153 wage and benefit costs. No rate shall be increased pursuant to this
154 subsection in excess of one hundred fifteen per cent of the median rate

155 for the facility's peer grouping, established pursuant to subdivision (2)
156 of subsection (f) of this section, unless recommended by the
157 commissioner and approved by the Secretary of the Office of Policy
158 and Management after consultation with the commissioner. Such
159 median rates shall be published by the Department of Social Services
160 not later than April first of each year. In the event that a facility
161 granted an interim rate increase pursuant to this section is sold or
162 otherwise conveyed for value to an unrelated entity less than five years
163 after the effective date of such rate increase, the rate increase shall be
164 deemed rescinded and the department shall recover an amount equal
165 to the difference between payments made for all affected rate periods
166 and payments that would have been made if the interim rate increase
167 was not granted. The commissioner may seek recovery from payments
168 made to any facility with common ownership. With the approval of
169 the Secretary of the Office of Policy and Management, the
170 commissioner may waive recovery and rescission of the interim rate
171 for good cause shown that is not inconsistent with this section,
172 including, but not limited to, transfers to family members that were
173 made for no value. The commissioner shall provide written quarterly
174 reports to the joint standing committees of the General Assembly
175 having cognizance of matters relating to aging, human services and
176 appropriations and the budgets of state agencies, [and to the select
177 committee of the General Assembly having cognizance of matters
178 relating to aging,] that identify each facility requesting an interim rate
179 increase, the amount of the requested rate increase for each facility, the
180 action taken by the commissioner and the secretary pursuant to this
181 subsection, and estimates of the additional cost to the state for each
182 approved interim rate increase. Nothing in this subsection shall
183 prohibit the commissioner from increasing the rate of a licensed
184 chronic and convalescent nursing home or a rest home with nursing
185 supervision for allowable costs associated with facility capital
186 improvements or increasing the rate in case of a sale of a licensed
187 chronic and convalescent nursing home or a rest home with nursing
188 supervision, pursuant to subdivision (15) of subsection (f) of this
189 section, if receivership has been imposed on such home.

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2013	17b-340(a)
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Statement of Legislative Commissioners:

In section 1(a), two references to "he" were changed to "he or she" for consistency, and "joint standing committees of the General Assembly having cognizance of matters relating to human services and appropriations and the budgets of state agencies and to the select committee of the General Assembly having cognizance of matters relating to aging," was changed to "joint standing committees of the General Assembly having cognizance of matters relating to aging, human services and appropriations and the budgets of state agencies, [and to the select committee of the General Assembly having cognizance of matters relating to aging,]" for accuracy.

HS *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill changes reporting requirements for certain for-profit chronic and convalescent nursing homes, which has no state fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 6609*****AN ACT CONCERNING NURSING HOME TRANSPARENCY.*****SUMMARY:**

This bill requires every for-profit chronic and convalescent nursing home (this appears to mean each for-profit nursing home, see BACKGROUND) that receives state funding to include in its annual cost report to the Department of Social Services (DSS) a profit and loss statement from each related party that receives \$10,000 or more a year from the nursing home for goods, “fees,” and services. (Presumably, this means any money the related party receives in fees, not for them.) Cost reports are used to determine the rate DSS pays nursing homes for serving Medicaid-eligible residents.

Under the bill, a “related party” includes any company related to the nursing home through family association, common ownership, control, or business association with any of the home’s owners, operators, or officials. A “profit and loss statement” is the most recent annual statement on profits and losses that the related party finalizes before the annual report the law mandates.

EFFECTIVE DATE: July 1, 2013

BACKGROUND***Nursing Home Cost Reports***

State law requires nursing homes to submit cost reports to DSS by each December 31. These reports include an accounting by the homes of any related-party transactions that occur during the reporting period. The report form includes space for the home to indicate, for each related party and regardless of the amount of the transaction:

1. the related individual or company name and address;

2. whether the entity also provides goods and services to non-related parties and the percentage of revenue the entity receives from the non-related parties;
3. a description of the goods and services provided;
4. where (page and line number) on the cost report these costs are shown;
5. the cost reported; and
6. the actual cost to the related party.

Federal Requirements

Federal law requires nursing homes that receive Medicaid funding to disclose to the state Medicaid agency information on related parties, including information on:

1. anyone with direct or indirect ownership in the home of 5% or more;
2. officers, director, and partners;
3. managing employees;
4. anyone who is an “additional disclosable party” (defined as any person or entity who (a) exercises operational, financial, or managerial control over the facility or a part thereof, provides policies or procedures for any of the operations, or provides financial or case management services to the facility; (b) leases or subleases real property to the facility, or owns a whole or part interest of 5% of more of the total property value of the facility; or (c) provides management or administrative services, management; or clinical consulting, accounting, or financial services to the facility (42 USC Sec. 1320a-3).

Federal regulations permit nursing homes to include as allowable costs those they incurred from procuring services, facilities, and

supplies furnished by an entity related by common ownership or control. The maximum that is allowed is the actual cost to the related party. But, the regulations allow homes to include the actual charge for goods and services if the home can demonstrate by convincing evidence that:

1. the supplying organization is a bona fide separate organization;
2. a substantial part of its business activity of the type it is carrying on with the home is also transacted with others and that there is an open, competitive market for the type of services, facilities, or supplies the entity provides;
3. the services, facilities, or supplies that institutions commonly obtain from other entities are not a basic element of patient care that the home ordinarily would furnish directly to its residents; and
4. the charge to the home is in line with the charge in the open market and no more than the entity would charge any others for the same goods and services (42 CFR Sec. 413.17).

Nursing Home Licensing Designation

By law, nursing homes must be licensed by the Department of Public Health. The license can be for skilled (also called chronic and convalescent) beds, intermediate care (also called rest home with nursing supervision) beds, or both. The Medicaid reimbursement for the skilled beds is higher than that for the intermediate care beds.

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 12 Nay 6 (03/21/2013)